IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 365 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
YUSUFBHAI ABDULGANI SHAIKH - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,
M/S THAKKAR ASSOC. for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 15.09.1994 passed by the learned Addl. Sessions Judge, Nadiad in Criminal Appeal No. 6 of 1993 whereby, the appeal was allowed and the respondent – accused was acquitted of the

charges levelled against him.

2.0 The brief facts of the prosecution case are as under;

2.1 The respondent herein was working as a Clerk in the District Treasury Office, Kheda of the appellant – State since the year 1971. On 27.05.1983 the Officers of the appellant – State carried out inspection of the records of the Treasury Office and it was found that three Registers of the year 1980 – 1981 were missing. A complaint with respect to the aforesaid incident was filed against the respondent.

2.2 Necessary investigation was carried out. At the end of investigation, charge-sheet was filed against the respondent with the Court of learned J.M.F.C., Kapadvanj and, ultimately, trial was conducted. At the end of trial, the learned Magistrate convicted the respondent for the alleged offence in question vide order dated 30.12.1992 passed in Criminal Case No. 1801 of 1984.

2.3 Being aggrieved by the said order passed by the learned Magistrate, the respondent preferred an appeal before the District & Sessions Court, Nadiad. The learned Addl. Sessions Judge, after considering the entire oral as well as documentary evidence on record, acquitted the respondent of the charges levelled against him. Hence, the present appeal.

3.0 Heard learned counsel for the respective parties and

perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances,

> to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
>
> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 The trial Court has not believed the statement made by the respondent at Exhibit – 40 since the same was given before a person who was his superior in the District Treasury Office, Kheda at the relevant point of time. Therefore, the said statement at Exhibit – 40 was not considered to be independent and a one made voluntarily. Apart from that the Clerk who used to maintain the records of the District Treasury Office was not examined. Thus, the appellate Court, after considering the entire oral as well as documentary evidence on record, has come to the conclusion that the prosecution has failed to prove beyond doubt the guilt of the respondent.

7.0 In above view of the matter, I am of the opinion that the appellate Court was completely justified in acquitting the

respondent of the charges levelled against him. In my view, the findings recorded by the appellate Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the appellate Court and, hence, find no reasons to interfere with the same.

8.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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